suggested for the remaining 80 SMR Category channels, 50 Business Category channels, and the 150 General Category channels, will best protect the viability of smaller SMR systems and preserve their opportunities to implement more efficient technologies and develop alternative wide-area systems.

B. THE COMMISSION SHOULD AUCTION MTA WIDE-AREA BROADBAND LICENSES FOR A SINGLE 200-CHANNEL BLOCK

Under the Commission's Rules, each of the two cellular carriers are assigned a 25 MHz block of contiguous and exclusive-use channels in a Metropolitan Statistical Area ("MSA") or a Rural Statistical Area ("RSA"). PCS licensees will similarly be granted exclusive use of a contiguous block of channels -- either 10 MHz or 30 MHz -- throughout a defined geographic area (either MTA or BTA) with the authority to relocate incumbent microwave service providers. Although the upper 200 channel 10 MHz block would continue to place wide-area SMRs at a significant spectrum disadvantage vis-a-vis cellular and broadband PCS, it offers the most practicable spectrum parity possible.87/

While designating 10 MHz for MTA-based licensing of wide-area systems, the Commission proposes licensing it in four 2.5 MHz (50 channel) blocks. The Commission speculated that viable, competitive wide-area SMR systems could be based on these smaller spectrum assignments and that this would permit applicants to apply

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87/ Given the extensive, existing licensing of 800 MHz spectrum band, a wide-area SMR licensee with all 200 channels initially would have significantly less than 10 MHz of contiguous spectrum throughout the MTA. Nevertheless, this block most closely reflects the spectrum access of CMRS competitors.

only for the spectrum they need. The Commission wisely proposed no limits on an applicant applying for and obtaining all four blocks, concluding that this would allow the marketplace to decide whether the spectrum is most valuable on an aggregated or disaggregated basis.

Nextel respectfully disagrees that licensing wide-area SMRs on four 50-channel blocks is in the public interest. Wide-area SMR systems should have the ability to use (and reuse) a large number of contiguous channels to compete successfully with cellular and broadband PCS. The four 50-channel block approach would make it excessively difficult for an MTA licensee to obtain a 10 MHz assignment to achieve minimal comparability with the cellular and broadband PCS spectrum assignments.88/

88/ The Commission states that there is record support in this proceeding for four 50-channel blocks based on its previous proposal to license 42-channel blocks of SMR spectrum. See Notice of Proposed Rule Making, 8 FCC Rcd 3950 (1993). That proposal was in turn based on a Petition for Rule Making filed by Nextel in 1992 urging the Commission to auction 105-channel blocks of unused SMR spectrum for wide-area SMR systems. Nextel proposed therein that if 105 channels were unavailable in a market, the Commission could identify smaller blocks down to 42 channels -- the minimum necessary to implement a standard seven cell, three sector frequency reuse architecture. The 42 channel minimum was subsequently included in AMTA's proposal for wide-area SMR licensing which was incorporated into the Commission's Notice and then herein. Thus, there is "record support" only for the proposition that 42 channels will enable minimal frequency reuse (two 25 kHz channels per sector in a standard reuse pattern). It does not demonstrate that a 42-channel (or a 50-channel) stand-alone MTA SMR system would be financially, commercially or technically viable.

Moreover, the issue of broadband technology implementation, which is fundamental to this proposal, was not considered in the earlier proceeding. Neither was the Budget Act's CMRS regulatory symmetry requirements.

In its PCS licensing proceeding, the Commission recognized Nextel's aggregation of approximately 10 MHz of SMR spectrum in certain markets as supportive of the appropriateness of 10 MHz PCS assignments.89/ Wide-area SMR systems must have at least 10 MHz of contiguous spectrum to utilize future advanced technologies. For example, a 50-channel block is insufficient to implement even one CDMA channel. A 100-channel block could accommodate one CDMA channel; however, a commercially viable system would require at least three CDMA channels necessitating nearly 200 contiguous channels.90/ As to GSM, a seven cell, three sector reuse pattern requires 8.4 MHz of contiguous spectrum, or a minimum of 168 contiguous SMR channels.

These are examples of the types of new technologies that will be used by cellular and PCS. The SMR licensing rules today prevent SMRs from having these technology options. Broadband CMRS competition and regulatory symmetry require that all competitors have the flexibility to adopt the technologies necessary to compete with other CMRS providers. Anything less than 10 MHz of contiguous spectrum would place wide-area SMRs at a severe competitive disadvantage against cellular and PCS systems with from 10 MHz to

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89/ See Second Report and Order, 8 FCC Rcd 7700, 7725-26 (1993).

90/ A single narrowband 2.5 MHz CDMA channel requires two 0.55 MHz guardbands which increases required spectrum for a single CDMA channel to 3.6 MHz of contiguous spectrum or 72 contiguous SMR channels. A two channel CDMA system requires 6 MHz of contiguous spectrum, or 120 contiguous SMR channels. A three channel CDMA system requires a minimum of 8.6 MHz of contiguous spectrum, or 172 contiguous SMR channels.

30 MHz of contiguous spectrum available for future wireless technologies.91/

Additionally, licensing MTA SMRs on four 2.5 MHz blocks will encourage speculators to bid on a 50-channel block in the hopes of winning it and then greenmailing the other MTA block winners in the MTA.92/ It would also create opportunities for parties with deep pockets to buy an SMR license for no purpose other than to frustrate a full 10 MHz wide-area SMR system in that MTA. This would allow an obstructionist to damage the competitive position of a wide-area SMR by preventing it from acquiring sufficient spectrum to implement the advanced technologies discussed above.

In the Third Report and Order, the Commission stated that assigning "contiguous spectrum blocks to a single licensee on an exclusive basis" (emphasis added) is an essential element of its PCS and cellular licensing rules not included in the SMR licensing

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91/ In fact, the research and development efforts of manufacturers are driven by the fact that the major wireless carriers will have at least 10 MHz of contiguous, exclusive use spectrum in a market.

92/ The mobile services industry -- whether SMR or cellular -- has been rife with speculators and greenmailers. For example, there has been an explosion of activity by SMR "application mills" in which a promoter encourages consumers to invest thousands of dollars to obtain SMR licenses by promising quick supranormal returns through the "promise" of purchases by wide-area system operators. The Federal Trade Commission and the Securities and Exchange Commission have each closed down such operations during the past year and placed their assets into receivership. See Waiver Request of Daniel R. Goodman and Dr. Robert Chan, Public Notice, dated April 6, 1994.

scheme.93/ A 10 MHz MTA license with mandatory retuning would rectify this disparity.

V. CONSTRUCTION REQUIREMENTS AND TECHNICAL ISSUES

A. CONSTRUCTION REQUIREMENTS FOR MTA LICENSEES

The FNPRM proposes to establish construction requirements for MTA licensees similar to those required of PCS licensees. First, MTA licensees would have five years to construct their systems and be subject to interim coverage requirements similar to those in the cellular and PCS rules.94/ The Commission proposes to require MTA licensees to provide coverage to one-third of the MTA population within three years of initial license grant and to two-thirds of the MTA population by the end of the five year construction period as required of 30 MHz PCS licensees. The FNPRM seeks comment on how to define "coverage" for the wide-area SMR service, *i.e.*, whether coverage by a single channel is sufficient or whether multi-channel coverage should be required, given the substantial number of existing licensees in this service.95/

Nextel agrees that the Commission must define the concept of coverage in this context (1) to assure that MTA licensed spectrum is expeditiously utilized and (2) "to discourage applicants who have a limited ability to provide coverage within an MTA from seeking MTA licenses for anti-competitive reasons, *e.g.*, to block

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93/ Third Report and Order at para. 95.

94/ FNPRM at para. 48, citing Third Report and Order at para. 180.

95/ FNPRM at para. 48.

potential acquisition of the MTA license by an applicant who already provides substantial coverage."96/ As discussed above, a single channel SMR system could be deployed that meets the bare population coverage test. For example, the 40 dBu contour from a single channel SMR system operating on the World Trade Center in New York City with 600 watts effective radiated power, and a radiation center 1423 feet above mean sea level,97/ covers 52% of the population of the New York MTA.98/ Similarly, a single channel station operating on Santiago Peak in Southern California can cover 37% of the population of the Los Angeles MTA; a single channel station located on the Sears Tower in Chicago can cover 54% of the population of the Chicago MTA.99/

Given this analysis, there are several analog licensed stations that already meet the three year interim population coverage standard in the top three MTAs in the Nation. A party

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96/ Id. at para. 49.

97/ These are the licensed operating facilities of WNAJ372 and several other SMR stations licensed at the World Trade Towers.

98/ The 1990 U.S. Census population contained in the New York MTA is 26,410,597. The 40 dBu contour from this station encompasses a population of 13,786,971.

99/ Station WZC810 and others operate with 1000 watts effective radiated power and a radiation center of 5726 feet above mean sea level on Santiago Peak. The 40 dBu contour of this station encompasses a population of 7,128,178. A population of 19,145,232 is contained within the Los Angles MTA.

Station WNAF841 and others operate with 600 watts effective radiated power and a radiation center of 2062 feet above mean sea level on the Sears Tower. The 40 dBu contour of this station encompasses a population of 6,491,719. A population of 12,069,700 is contained within the Chicago MTA.

with anti-competitive motives could purchase a single channel from an existing licensee, win the auction for that MTA, and immediately satisfy the three year interim coverage requirement -- even though the vast majority of the "significant amount of spectrum licensed to the MTA licensee" would not be in service.100/

Nextel recommends modifying the proposed interim coverage requirements to require MTA licensees to demonstrate authority to encompass a per channel average of one-third of the MTA population after three years and a per channel average of two-thirds of the MTA population after five years. The methodology for calculating a per channel average and an example are set forth in Attachment B.

A per channel average can be easily calculated for any SMR system and would resolve the inadequacies of the bare population standard. It assures that MTA licensees have aggregated sufficient spectrum to deploy multiple frequencies on an expeditious basis to serve the population of the MTA while preventing anti-competitive attempts to block the development of wide-area SMR systems. It meets the Commission's stated desire:

> ". . . that an MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block. As a practical matter, we believe this will discourage applications who have a limited ability to provide coverage within an MTA from seeking MTA licenses for anti-competitive reasons, *e.g.*, to block potential acquisition of the MTA license by an applicant who already provides substantial coverage."101/

100/ FNPRM at para. 49.

101/ Id.

B. CO-CHANNEL PROTECTION REQUIREMENTS FOR MTA SYSTEMS

The Commission recognizes that the MTA licensee will have dual co-channel protection requirements: (1) protection among adjacent MTA SMR systems; and (2) protection of incumbent SMR licensees.

1. MTA to MTA Co-Channel Protection

The FNPRM proposes to limit the field strength at an MTA boundary to 22 dBu and to require coordination and concurrence from the neighboring MTA licensee if a higher field strength is placed at the border. The proposed standard will prevent interference at the MTA boundaries and will provide incentives for cooperation, such as frequency sharing, between neighboring MTA licensees desiring to extend their service contours to their MTA boundaries. This approach is similar to the Commission's rules requiring adjacent cellular MSA licensees to coordinate frequency use to prevent harmful interference,102/ and has worked well in that service.

2. MTA to Incumbent Co-Channel Protection

With regard to the co-channel protection that MTA licensees should provide to local incumbent SMRs that do not or cannot be migrated or retuned, the Commission proposes to apply the existing co-channel separation requirements of Section 90.621(b). This rule requires that co-channel SMR systems be separated by a distance of at least 113 km (70 miles) or the lesser distances specified in the 40/22 dBu "short-spacing" table. To the extent that incumbent co-channel systems remain within an MTA, Nextel agrees with this

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102/ See Section 22.903(f) of the Rules.

proposal. Section 90.621(b) also includes additional provisions providing different separation requirements for high elevation sites in southern California, northern California, and Washington state and a provision for consensual short-spacing. These provisions account for anomalous propagation situations due to special terrain and geographic considerations and should apply in the MTA licensee/incumbent SMR system context.

In addition, Section 90.621(b) permits licensees to seek waiver of the co-channel separation requirements when an interference analysis shows that co-channel stations in a specific situation would receive equal or better protection than that provided by the "short-spacing" table; *i.e.*, that the 22 dBu interference contour of the proposed station does not overlap the 40 dBu service contour of the existing station.

Nextel proposes modifying Section 90.621(b) to permit such spacing without a waiver by an MTA licensee when this standard is met. This would enable MTA licensees to more readily take advantage of the additional interference protection available with low-power directional facilities used in the sectorized base stations typically deployed in frequency reuse systems. Nextel proposes that the MTA licensee be required to notify the protected incumbent station of such proposed spacing and provide it with engineering exhibits demonstrating that use of the co-channel frequency complies with the 40/22 dBu co-channel protection standard. The MTA licensee would be permitted to commence such operation without further licensing proceedings.

3. Modification of Incumbent Stations

As discussed in Section III, above, an incumbent local SMR station that cannot be or otherwise is not migrated from the MTA licensee block should be permitted to modify its facilities so long as such modifications do not expand its 40 dBu contour-defined service area. If a licensed incumbent wide-area system does not obtain the MTA license and cannot be retuned, it should be permitted to modify its stations and construct new stations, using channels contained in its wide-area channel pool in the MTA, as long as the 40 dBu contour of the modified or new stations does not extend outside the wide-area licensee's 40 dBu contours and authorized footprint.103/

Wide-area licensees have made strategic business and marketing decisions concerning build-out on the basis of these existing licenses authorizing construction throughout the "footprint." In some areas, the composite 40 dBu contours of a wide-area system may not yet fully cover its "footprint" which was defined by the composite 35-mile radius contours of the system's underlying constructed analog facilities. Limiting expansion to the 40 dBu contours of existing stations in areas where the 40 dBu contour does not extend to the footprint border would diminish the existing wide-area authorization.

103/ See Letter, dated December 23, 1992, from Ralph A. Haller, Chief, Private Radio Bureau, to David E. Weisman, on behalf of the Ad Hoc Specialized Mobile Radio Industry Group.

C. EMISSION MASK

In the Third Report and Order, the Commission concluded that when a licensee has control of a contiguous block of channels, out-of-band emission rules need apply only to the extent necessary to protect spectrum outside of the contiguous block. Therefore, the FNPRM proposes out-of-band emission rules only for the "outer" channels included in an MTA license, and to spectrum adjacent to interior channels used by incumbents. It proposes that for any frequency outside an MTA licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus $10\log_{10}$ (P) dB or 80 dB, whichever is the lesser attenuation.

Notwithstanding the above, the FNPRM proposes an out-of-band emission limitation that is more strict than that now in place at the ends of the contiguous channel block band. SMR licensees are currently required to suppress their emissions by at least 25 dB in the frequency range removed from the assigned frequency by 50 to 100 percent of the authorized bandwidth, and by at least 35 dB in the frequency range removed from the assigned frequency by 100 to 250 percent of the authorized bandwidth. An SMR station today is required to suppress its emissions by the proposed standard, *i.e.*, the lesser of 43 plus $10\log_{10}$ (P) dB or 80 dB, only in frequencies removed from the authorized frequency by more than 250 percent of the authorized bandwidth.

For example, under the current rules, an SMR station operating at the high end of the SMR band at channel 600 (865.9875 MHz), with

an authorized bandwidth of 20 kHz, would be subject to the strictest emission requirement -- the lesser of 43 plus $10\log_{10}$ (P) dB or 80 dB -- only at frequencies above 866.0375 MHz. Under the proposed rule, this station would be subject to this restriction at 866.000 MHz -- 0.0375 MHz closer to the authorized frequency. The result is that the proposed rule could make this channel and the channel at the lower end of the SMR band unusable for some emissions.

To correct this problem, while still providing satisfactory emission limitations, Nextel proposes that the Commission retain the existing emission mask for systems using 25 kHz channels, while adopting the proposed emission mask limit for systems using multiple 25 kHz channels in contiguous blocks. This would result in a more flexible emission plan.

D. BORDER AREA SPECTRUM ASSIGNMENTS

The FNPRM addresses the unique SMR spectrum allocation plans in the Mexican and Canadian border areas and seeks comment on possible wide-area SMR licensing plans for these areas.104/ It tentatively concludes that because the border areas are contained in MTAs that also include non-border areas, creating different licensing schemes would be administratively unworkable. Nextel supports this conclusion. The Commission should encourage and assist cross-border channel-sharing agreements between U.S and

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104/ FNPRM at paras. 27-28.

foreign licensees subject to the approval, as appropriate, of the United States, Canadian or Mexican governments.

VI. COMPETITIVE BIDDING ISSUES

The FNPRM proposes to model its rules and procedures for using competitive bidding to award wide-area SMR licenses among mutually exclusive applications on the PCS competitive bidding rules. These rules and procedures provide a useful starting point; however, they cannot be rubber-stamped onto wide-area SMR auctions given the significant differences between PCS licenses and wide-area SMR licenses.

First, the previous licensing of SMR spectrum sharply limits the ability of an MTA auction winner to deploy the MTA block frequencies. Given the existing 33,000 SMR licenses and the application backlog, there is little "white space" for initial licensing in nearly every MTA.105/ These limitations will be further exacerbated if MTA licensees do not receive authority to require incumbent local SMRs to migrate where voluntary retuning approaches are unsuccessful. Second, because there are so many existing licensees, there will be bidders for each MTA who have a capital investment in systems in the MTA and therefore a vested interest in the MTA license or licenses. Third, unlike the 30 MHz broadband PCS auctions, existing cellular licensees are not banned from bidding in their own markets. This promotes scenarios in

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105/ The spectrum in some markets is so heavily licensed, in fact, that there is some question as to what a successful MTA bidder will actually be purchasing if that bidder is not an existing incumbent provider.

which some bidders are incented to bid up the price for an MTA license for no reason other than to ensure that the successful bidder, who is an existing competitor, pays an artificially high price.

A. ELIGIBILITY TO PARTICIPATE IN THE AUCTION

The Budget Act made the foreign ownership requirements of the Communications Act applicable to SMR licensees effective February 10, 1994; previously these requirements did not apply to SMRs as private carriers. The Budget Act authorized the Commission to grant waivers of Section 310(b) to reclassified private carriers to continue their existing operations. However, becoming an MTA licensee is not within the narrow parameters of the waiver exception.106/ Accordingly, applicants not in compliance with Section 310(b) are ineligible to hold an MTA license. Additionally, since a similar restriction applies to PCS and cellular, it is mandated for regulatory symmetry.

As noted above, existing wide-area licensees have invested significant time, money and effort to aggregate spectrum to construct and implement wide-area systems and will be logical bidders for the MTA license. Although Nextel does not propose any other restrictions on eligibility to bid on MTA licenses, a new SMR regulatory framework should include provisions designed to thwart speculation and anti-competitive, obstructionist activities. Awarding an MTA license for the entire 200-channel block, along

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106/ See First Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1056 (1994).

with the interim coverage requirements and competitive bidding procedures proposed herein, are the minimum safeguards necessary to assure that only *bona fide* providers can bid on the MTA block licenses.

B. DESIGNATED ENTITIES

In establishing rules and regulations governing designated entity participation in the 800 MHz SMR auctions, Nextel urges the Commission once again to recognize the differences in these wide-area SMR licenses and the licenses envisioned by Congress in creating the Commission's competitive bidding authority. In the PCS auctions, for example, the Commission was presented with the opportunity to license 120 MHz of virgin spectrum after clearing incumbent microwave operations. Thus, special provisions for minorities, women and small businesses were intended to assist these under-represented parties in participating in a new and emerging telecommunications service. With a wide-open field of qualified applicants, vying for new spectrum, the PCS auctions provided the appropriate avenue for applying Congress' designated entity goals.

Congress' objective in establishing designated entity rules was to ensure designated entity participation in markets where designated entities are currently under-represented. The Commission has stated that it views the mobile services industry as the entire CMRS market, not simply the SMR market.107/ Through the PCS designated entity provisions, the Commission has opened

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107/ See Third Report and Order at paras. 54 *et. seq.*

avenues for designated entity participation in the CMRS marketplace. This was done on 40 MHz of set-aside spectrum.

C. SIMULTANEOUS MULTIPLE-ROUND BIDDING

The FNPRM proposes adopting the same processes used in PCS to auction 800 MHz MTA licenses in simultaneous multiple round bidding due to the high degree of interdependence among MTA licenses.108/ If, for example, the Commission auctions four licenses per MTA, the licenses are internally interdependent since a bidder may decide that aggregating two, three or four licenses in an MTA is the highest and best use of the spectrum and essential to its business plan. The licenses are interdependent in that an operator may seek to obtain licenses in adjacent MTAs to provide regional or even nationwide service -- regardless of whether the Commission creates multiple channel blocks or a single 200-channel license in each MTA.

The opportunity to purchase all 51 (or 204) MTA licenses or some combination thereof to provide major market, regional or nationwide advanced SMR services is essential to increase the ability of a wide-area SMR operator to compete with cellular and emerging PCS providers. In addition, the potential for an SMR operator to bid upon and obtain MTA licenses enabling it to offer customers coast-to-coast seamless coverage is in the public

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108/ FNPRM at para. 79. There are 51 MTAs in the United States. Thus, if the Commission adopts Nextel's position, there will be 51 licenses. Otherwise, there will be four licenses per MTA, resulting in 204 licenses for auction.

interest and will further enhance competition. Therefore, all of the MTA licenses are highly interdependent.

D. COMPETITIVE BIDDING RULES AND PROCEDURES

If the Commission applies the same rules it applied to MTA-based PCS license auctions,109/ the wide-area SMR auction rules will include minimum bid increments, simultaneous stopping rules, an upfront payment of $.02 x MHz x total pops to be bid upon in any single round, and a twenty percent down payment. Nextel generally supports including these features for 800 MHz MTA auctions with adjustments to account for the differences between 800 MHz and PCS licensing, as discussed above.

As noted above, while the PCS auctions license virgin spectrum after relocation of incumbent microwave systems, the SMR auctions would be for spectrum which is already heavily licensed. The SMR auctions differ significantly from the PCS auctions in that there will be incumbent providers, with a significant investment already made in that MTA, bidding on that spectrum against non-incumbent bidders, with very little to lose if they are not the successful bidder. This increases the potential for greenmail, obstruction, and other abuses.

1. The Upfront Payment

The proposed upfront payment, which is required for participation in the PCS auctions, may effectively discourage insincere PCS bidders but it is not likely to do so in the wide-area SMR auctions -- particularly if 2.5 MHz blocks are being

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109/ Id.

auctioned. The upfront payment would be minimal, yet the purchase of only one 2.5 MHz block license could have a significant impact on the development of wide-area SMR services in an MTA.110/ Therefore, with only a minimal deposit and a willingness to pay for a single MTA license, a party could effectively engage in anti-competitive maneuvers to thwart the competitiveness of *bona fide* wide-area SMR service.

Accordingly, the Commission should require a larger upfront payment *e.g.*, an upfront payment based on bidding for all 200 channels in an MTA, even if the bidder intends to bid on only one 50 channel block. In combination with the eligibility restrictions and interim coverage requirements discussed herein, this would help to ensure that MTA bidders are sincere and have the capability of providing wide-area SMR services in that MTA if it obtains the license.

2. Bid Withdrawal, Default and Disqualification

Another method by which the Commission may help to eliminate competitive bidding abuse would be to impose stricter penalties on bid withdrawal.111/ A party intent on bidding up the price of the MTA license, knowing that a particular incumbent must obtain

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110/ For example, a bidder could participate in the New York MTA auction by depositing only $1,320,529.80 (.02 x 2.5 MHz x 26,410,597 pops.).

111/ As the Commission stated in its Narrowband PCS competitive bidding rules, bidders must be aware that "there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or are unable to pay a balance due." Third Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2941, 2960 (1994) (the "Narrowband Rules").

that license, and knowing that it will be able to provide little or no service in that MTA if it obtains the MTA license, may place a bid in each round to raise the price. At some point the incumbent will concede, the other bidder will withdraw its high bid, and the incumbent will be left to purchase the license at an artificially-inflated price.112/

If the withdrawing bidder is subject to the withdrawal penalties in the Commission's PCS rules, it will be subject to nothing more than paying the difference between the withdrawn bid and the next-highest bid.113/ The incumbent, however, will be forced to pay the price of its final bid -- one that has been

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112/ In the PCS auction rules, the Commission maintained the discretion to re-auction a license under these circumstances. The Commission stated that another auction would be more appropriate given the potential for changed circumstances after the first auction. See Narrowband Rules at 2962. A subsequent auction, however, only serves the obstructionists' anti-competitive objectives by delaying the licensing of the spectrum and the implementation of new services. In the case of the wide-area SMR blocks, the circumstances are not likely to change given the fact that a significant portion of the block will already be licensed to one or a handful of providers. The potential bidders, therefore, are not likely to change, and strategies for use of these already-licensed blocks are not likely to change. Therefore, the Commission should simply award the license to the second-highest bidder in the auction at the highest bid where the withdrawing bidder was one of the last two participants.

If the Commission nonetheless concludes that a second auction is appropriate, it should limit participation to those parties which participated in the initial auction. The withdrawing bidder must not be allowed to participate.

113/ See Narrowband Rules at 2961. In some cases, this could be perhaps a few thousand dollars. While such a penalty may seem substantial, it would be worthwhile to the withdrawing bidder who managed to double or triple the price the incumbent might have otherwise paid.

intentionally and improperly driven higher than the actual value of the MTA license for anti-competitive purposes.

The solution is to impose a larger punitive penalty on applicants withdrawing their bids in such circumstances, such as forfeiture of the upfront payment.114/ The potential for abuse in wide-area SMR auctions requires that the Commission be cognizant of it and take appropriate preventative measures.

VII. CONCLUSION

Nextel supports the Commission's efforts to achieve regulatory parity among all broadband CMRS providers. This requires adopting an SMR licensing process that places wide-area SMRs on a more level playing field with cellular and PCS providers, while providing continued opportunities for other SMR systems. A new regulatory framework for 800 MHz SMR licensing should include each of the following components:

> (1) using simultaneous, multiple round competitive bidding to license the upper 200 SMR Category channels in one block for broadband SMRs on an MTA basis;
>
> (2) authorizing MTA SMR licensees to obtain exclusive, contiguous spectrum through voluntary agreements to retune non-affiliated incumbent SMRs to other 800 MHz frequencies and, where necessary, Commission-enforced mandated retuning;
>
> (3) creating exclusive new SMR blocks on the 150 General Category and 50 Business Category channels and deferring retuning (voluntary followed by mandatory) of incumbents

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114/ In those cases, the Commission may consider added penalties to punish such gross misconduct and abuse of the process. In the Narrowband PCS auction rules, for example, gross misconduct in the withdrawal of a bid or in default can result in revocation of eligibility to bid in future auctions or even the institution of proceedings to revoke any existing licenses held by the applicant. See Narrowband Rules at 2961.

in non-congested areas from the wide-area 200 channels until the new SMR blocks are established;

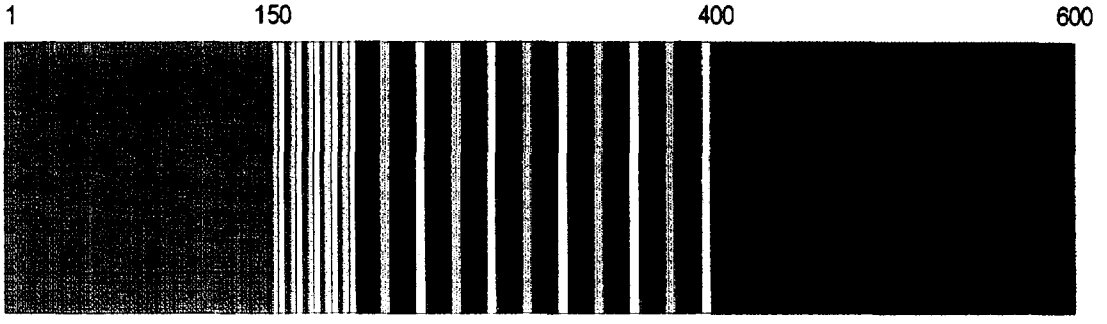
(4) limiting MTA licensees to 280 channels (the upper 200 and lower 80 SMR Category channels) in non-congested areas until January 1, 2000 and withdrawing all outstanding extended implementation grants on the new SMR channels after retuning is completed; and

(5) establishing construction and interim coverage requirements and competitive bidding rules for MTA licensees to ensure expeditious and extensive use of the SMR spectrum and prevent warehousing and speculation.

Chart V depicts the current 800 MHz licensing plan at issue in this proceeding, the actual licensing on this spectrum today, and Nextel's proposed licensing framework.

These actions, along with the others discussed herein, will meet the regulatory symmetry requirements of the Budget Act. They will eliminate, to the extent feasible, existing regulatory obstacles that prevent wide-area SMRs from introducing more efficient technologies to meet the public's demand for advanced mobile communications services while enhancing opportunities for local SMRs using traditional technology in less spectrum scarce

CURRENT 806-821/851-866 MHz CHANNEL ALLOCATION PLAN



GENERAL CATEGORY

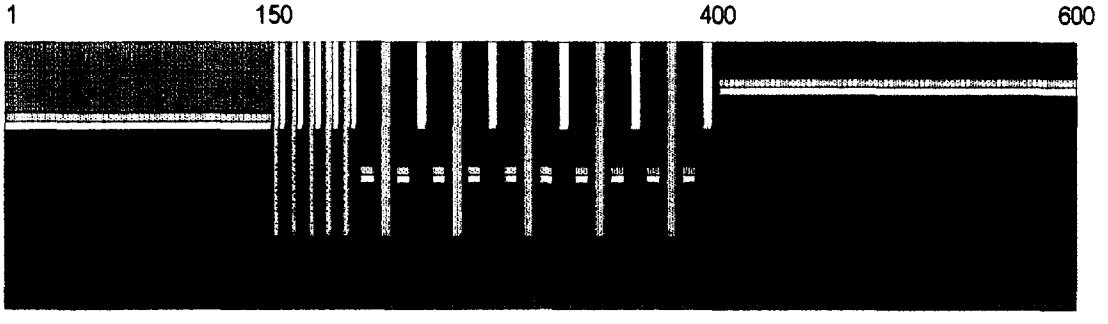
INDUSTRIAL/LAND TRANSPORTATION

BUSINESS

PUBLIC SAFETY

SMRS

ACTUAL LICENSING



GENERAL CATEGORY

INDUSTRIAL/LAND TRANSPORTATION

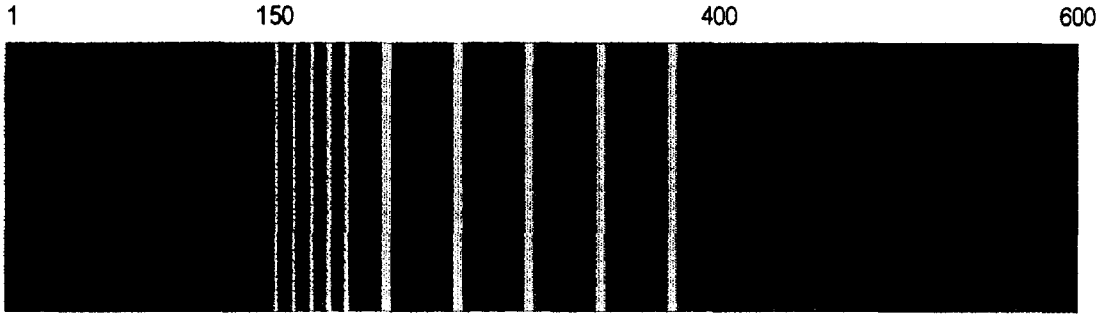
BUSINESS

PUBLIC SAFETY

SMRS

WIDE AREA SMRS

PROPOSED CHANNEL ALLOCATION PLAN



SMRS

INDUSTRIAL/LAND TRANSPORTATION

PUBLIC SAFETY

BROADBAND SMR

CHART V

areas. Accordingly, the Commission should move expeditiously to revise its SMR rules and policies as set forth herein.

Respectfully submitted,

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Dated: January 5, 1995

ATTACHMENT A

Chicago and Denver Retuning Demonstration

In carrying out the demonstration retunings discussed below, Nextel adhered to the following guidelines:

1. All channels used for retuning meet the required distance separations under the Commission's Rules for the height and power of the licensed channel at its currently licensed location.

2. Channels allotted to the Public Safety category were not considered as retuning alternatives. Channels allotted to the Industrial/Land Transportation Category were considered only for Category eligibles.

3. Pending applications for stations that do not provide the required co-channel distance separations of §90.621(b) to licensed stations of Nextel and its subsidiaries were not accorded co-channel protection from retuned stations. Nextel will not concur to short-spacing by these applications; therefore they will be denied.

4. Only licensed stations were retuned; pending applications within the top 200 channels that are granted would require retuning. Nextel anticipates that this will be possible because there are numerous pending applications requesting channels outside the contiguous block which cannot be granted. In many cases, these applications currently block the retuning of incumbent stations to Nextel channels; their dismissal will open additional retuning opportunities.

ATTACHMENT B

Interim Coverage Requirements for MTA Licensees

To calculate the per channel average, the Commission would require the licensee to demonstrate, for each constructed and operational transmitter site and for each channel in the MTA license, the operating power and height allowed under Section 90.621(b) of the Commission's SMR co-channel protection rules. The licensee would demonstrate the population contained in the composite of the 40 dBu service contours from these transmitter sites for each channel. The per channel average population would be the total of the per channel populations encompassed divided by the number of channels in the MTA license.

Assume a 200 channel MTA licensee with 131 constructed and operational base station sites. The licensee would begin by examining its first channel, channel 401, at each of the 131 sites. The licensee would determine if this channel could be used at the first site and if so, the allowed operating power for this channel given the antenna height of this base station and co-channel protection requirements. The licensee could, at its discretion, use omni-directional or directional antennas. In addition, any short-spacing agreements or adjacent MTA frequency sharing agreements could be considered. This channel would not have to be in operation at this site, it is the potential to use the channel that is relevant for interim coverage limit purposes.

The licensee would then determine the allowed operating power for channel 401 at each of the other 130 sites. The channel 401